constitute evidence against the opposing party of the facts stated in the prior declaration.[9] They have no force in making an affirmative case for the party, nor in corroborating the testimony on the main issue.[10]

In the case of *Coos Bay Manufacturing Company v. California Selling Co.*[11] the plaintiff was allowed to impeach the testimony of his own witness, the president and principal stockholder of the defendant corporation, by introducing a prior writing in which he had given other and contradictory evidence to that elicited from him during the trial. In justifying this ruling the court suggested that this was such a witness as the plaintiff might feel obliged to call. The witness here was not, however, one whom the law obliged the plaintiff to call, although he was an important witness to prove the point in controversy. It is also obvious that there was no great surprise present on the part of the plaintiff, for it was to be expected that one so vitally interested in the welfare of the defendant corporation as this witness would not be unlikely to testify adversely to one seeking to subject it to a pecuniary liability. This, then, may be the forerunner of a line of decisions more in accord with the spirit of the California code section above referred to, which is silent as to surprise and damage. The principle at the basis of this ruling is really that here is a witness like a party opponent, or one obviously too hostile to be considered as one's own witness and within the rule which forbids his impeachment by prior inconsistent statements; that in effect, at least, his statements amount to admissions.[12] But whether the statements are technically admissions or not, the principal case tends to a more logical application of the rule indicating that where the reasons for the rule cease to exist the rule should come to an end.

M. P. G.

MUNICIPAL CORPORATIONS: CHARITIES: POLICE POWER.—The attempt of the city council of Los Angeles to control all charities and charitable enterprises and to place them on a basis of coldly calculating and scientific efficiency has received a severe rebuke in the opinions rendered in the case of *In re Dart.*[1] The opinion of Mr. Justice Henshaw is written in his best and most picturesque vein. Being backed up by sound law, we

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[9] Thiele v. Newman (1897), 116 Cal. 571, 48 Pac. 713; Hyde v. Buckner (1895), 108 Cal. 522, 41 Pac. 416.

[10] In re Kennedy (1894), 104 Cal. 429, 38 Pac. 93.

[11] (Jan. 18, 1916), 22 Cal. App. Dec. 140, 155 Pac. 817.

[12] Thompson on Corporations, § 1628. (It is impossible to tell in the principal case whether the president was intrusted with the management of the business so that his admissions would be binding against the corporation.)

[1] (1916), 51 Cal. Dec. 178, 155 Pac. 63.

cannot say that it loses anything of force by reason of its interesting and satirical style. The opinion of Mr. Justice Shaw, however, will strike the lawyer as the more trustworthy and as a more satisfactory form of judicial statement.

The Los Angeles ordinance in question created a Municipal Charities Commission and forbade the soliciting of charity by any person, firm or corporation without the authorization of the commission. The commission was in effect given complete and arbitrary power to forbid any person from soliciting for charity, regardless of his personal character, worth or fitness. While the soliciting of contributions for charitable purposes is undoubtedly subject to regulation under the police power, the ordinance in question transcended the limits of reasonable regulation. It was unquestionably unconstitutional and void.[2]

W. C. J.

NUISANCE: MUNICIPAL CORPORATIONS: POWER OF MUNICIPALITY TO PROHIBIT OR REGULATE EMISSION OF SMOKE.—In *Northwestern Laundry v. Des Moines*[1] the United States Supreme Court passed upon the power of a state legislature to declare the emission of smoke a nuisance, and the power of a municipality to abate such a nuisance. An Iowa law declared the emission of dense smoke to be a nuisance in cities of 30,000 or more inhabitants having a commission government, and in cities of 16,000 or more having a special charter. Such cities were empowered to abate the nuisance and to provide necessary regulations for that purpose. Pursuant to this authority a Des Moines ordinance prescribed tests for density, compelled the remodeling of furnaces causing the nuisance, required the approval of the city smoke inspector for all furnace equipment, and made his decisions subject to the review of a smoke commission. The act and ordinance were held valid, the one as a proper exercise of the police power of the state, the other as a regulation reasonably adapted to accomplish the purpose of the statute. Speaking for the Court, Mr. Justice Day said: "So far as the Federal Constitution is concerned, we have no doubt the state may by itself, or through authorized municipalities, declare the emission of dense smoke in cities or populous neighborhoods a nuisance and subject to restraint as such; and that the harshness of such legislation, or its effect upon business interests, short of a merely arbitrary enactment, are not valid constitutional objections. Nor is there any valid Federal constitutional objection in the fact that the regulation may require the discontinuance of the use of

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[2] Yick Wo v. Hopkins (1886), 118 U. S. 356, 6 Sup. Ct. Rep. 1064,30 L. Ed. 220; Ex parte Sing Lee (1892), 96 Cal. 354, 31 Pac. 245; Los Angeles County v. Hollywood Cemetery Assn. (1899), 124 Cal. 344, 57 Pac. 153; Schaezlein v. Cabaniss (1902), 135 Cal. 466, 67 Pac. 755; Hewett v. Board of Medical Examiners (1906), 148 Cal. 590, 84 Pac. 39.

[1] (Jan. 10, 1916), 36 Sup. Ct. Rep. 206.